

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHERMAN CARTER,	:
	:
Plaintiff,	:
	:
v.	: Civil Action No. 99-757-JJF
	:
COMMISSIONER STANLEY TAYLOR,	:
WARDEN ROBERT SNYDER, and	:
RECORDS SUPERVISOR	:
REBECCA L. McBRIDE,	:
	:
Defendants.	:
	:

MEMORANDUM ORDER

On November 22, 2005, Defendants appealed the Court's November 10, 2005 Memorandum Order denying Defendants' request for judgment in their favor on the basis of qualified immunity and finding that genuine issues of material fact existed making resolution of this issue inappropriate on summary judgment. On December 1, 2005, the Court held an in-court conference with the parties to discuss the status of this case in light of the appeal.

The Court noted that in the past, it had denied Plaintiff's requests for counsel. The record indicates that the Court had requested representation for Plaintiff, but his case was not selected by the then-available attorneys. As the Court noted at the December 1 conference, Plaintiff has litigated this case commendably in a pro se capacity and the issues have been relatively straightforward as a factual matter. However, given the complexities of the legal issues surrounding qualified

immunity and the current appeal, which brings along a host of additional procedural and substantive complexities related to jurisdiction and the like, the Court concludes that counsel is critical for Plaintiff to proceed at this stage.

Because an appeal has been noticed, the Court will defer to the Court of Appeals for the Third Circuit to appoint counsel for Plaintiff to defend this appeal. If, however, the Third Circuit is unable to obtain representation for Plaintiff through its panel of available attorneys, the Court will retain jurisdiction of this case insofar as the appointment of counsel is concerned so that Plaintiff may petition this Court for an attorney.

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Petitioner's request for appointment of counsel is GRANTED.
2. Petitioner shall notify the Court in writing if an attorney is not appointed to represent him at the appellate level so that representation can be secured for Plaintiff through this Court's Federal Civil Panel.
3. In light of the pending appeal, Plaintiff's Motion In Limine (D.I. 156) will be DENIED with leave to renew in the event that this case is remanded for trial.

December 5, 2005
DATE


UNITED STATES DISTRICT JUDGE